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TAX CONVENTION WITH TUNISIA

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE TUNISIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED EXCHANGE OF NOTES, SIGNED AT WASHINGTON ON JUNE 17, 1985

MARCH 13, 1986.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE
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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 13, 1986.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (referred to hereafter as "the Convention"), together with a related exchange of notes, signed at Washington on June 17, 1985. I also transmit the report of the Department of State on the Convention.

The Convention is the first income tax treaty to be negotiated between the United States and Tunisia. It is based on model income tax treaties developed by the Department of the Treasury, the Organization for Economic Cooperation and Development, and the United Nations. It deviates in some respects from the models to reflect Tunisia's status as a developing country and an importer of capital.

The Convention provides rules with respect to the taxation of various types of income, such as business profits, personal service income, and investment income. It also contains standard provisions guaranteeing a foreign tax credit, ensuring nondiscriminatory tax treatment, and providing for exchanges of information and administrative cooperation to avoid double taxation and present tax evasion.

I recommend that the Senate give early and favorable consideration to the Convention, together with the related exchange of notes, and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 3, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related exchange of notes, signed at Washington on June 17, 1985.

The Convention is the first income tax treaty to be negotiated between the United States and Tunisia and is based on the model draft income tax conventions prepared by the United States, the Organization for Economic Cooperation and Development (OECD), and the United Nations. The Convention differs from the models in some respects to reflect Tunisia's status as a developing country and an importer of capital.

The Convention follows the general rule that business profits derived by a resident of one of the Contracting States may be taxed by the other Contracting State only to the extent attributable to a "permanent establishment" in that other State, and then on a net basis after deductions for expenses incurred in earning the income. In recognition of Tunisia's status as a developing country, a construction or installation site or a drilling rig constitutes a permanent establishment after 183 days in a 365-day period, rather than after the 12-month period typically found in United States tax treaties with industrial countries.

The Convention provides for a maximum rate of withholding tax at source of 20 percent on dividends from portfolio investments and 14 percent on dividends from direct investment (defined for this purpose as dividends paid to a company owning at least 25 percent of the share capital of the paying company). The 14 percent rate is high relative to most United States tax treaties with other industrial countries, but is not excessive compared with the rate allowed in some other United States treaties with developing countries. Moreover, the applicable rate of Tunisian corporate tax is generally low enough that the combined Tunisian corporate and withholding taxes on profits distributed as direct investment dividends may be credited against the United States corporate tax of 46 percent. This result prevents the transfer of revenues from the Tunisian Treasury to the Treasury of the United States while removing the tax penalty to United States companies of investing in Tunisian

subsidiaries. In the absence of the Convention, the Tunisian rate of withholding tax on dividends is 25 percent.

In addition, the Convention provides for a maximum rate of withholding tax at source of 15 percent on interest. Special exemptions apply to interest derived by the government or a government instrumentality of either country, by a financial institution on long-term loans (7 years or longer), or on loans to the Tunisian Government by a United States resident.

The Convention also provides a maximum rate of tax at source of 15 percent on royalties. The term royalties is defined broadly to include payments for technical studies, payments for technical assistance performed in the other country, and income from the leasing of certain equipment. This provision does not affect the leasing of ships and aircraft used in international traffic and the occasional leasing of containers and related equipment by international shipping and airline companies. Income from such leasing is taxable only in the country of residence of the leasing company. Leasing which falls within the definition of royalties is subject to the gross withholding tax to the extent not attributable to a permanent establishment in the source country. Where the leasing is done through a local office or other fixed place of business in the source country, the income is taxable on a net basis.

The rules governing the taxation of income from personal services are similar to those in other United States tax treaties. In general, individuals who are residents of one country and are working in the other country will be subject to tax in that other country if they stay longer than the stated period, earn more than the specified amount, or are employed and paid by a local company. A special exemption is available to visiting students and trainees.

The Convention also contains standard provisions guaranteeing a foreign tax credit, ensuring nondiscriminatory tax treatment, and providing for exchanges of information and administrative cooperation to avoid double taxation and prevent tax evasion.

In the accompanying exchange of notes, Tunisia expresses concern that the Convention does not include a tax incentive to investment in Tunisia, such as a "tax sparing credit", i.e., a foreign tax credit for the full amount of the tax specified in the Tunisian tax code even if, in fact, that tax has been reduced or waived as an incentive to encourage foreign investment. The United States, which has an established policy against "tax sparing" credits in such treaties, agrees to reopen discussions on that issue if the United States position should change in the future.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of this Convention. It has the approval of both Departments.

Respectfully submitted,

GEORGE P. SHULTZ.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE TUNISIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Tunisian Republic, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

This Convention shall apply in general to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State.

2. The existing taxes to which this Convention shall apply are:

(a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code but excluding the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, and social security taxes.

(b) In the case of Tunisia:

the business profits tax;
the tax on capital gains on real property;
the tax on profits of non-commercial professions;
the tax on wages, salaries and pensions;
the agricultural tax;
the tax on dividends;
the tax on income from credits, deposits, guarantees and current accounts;
the personal income tax;
the extraordinary tax for national solidarity.

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any major changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

(a) The term "person" includes an individual, a trust, an estate, a company, and any other body of persons;

(b) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other contracting State;

(d) The term "competent authority" means:

(1) In the case of the United States, the Secretary of the Treasury or his delegate,

(2) In the case of Tunisia, the Minister of Finance or his representative.

(e) The term "United States" means the United States of America; and when used in a geographical sense, the term "United States" means the states thereof and the District of Columbia and the area adjacent to the territorial sea of the United States over which, in accordance with international law, the United States may exercise rights with respect to the natural resources of the seabed and marine subsoil.

(f) The term "Tunisia" means the Republic of Tunisia; and when used in a geographical sense, means the territory of the Republic of Tunisia and the area adjacent to the territorial sea of Tunisia over which, in accordance with international law, Tunisia may exercise rights with respect to the natural resources of the seabed and marine subsoil.

(g) The term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires (and subject if necessary to the provisions of Article 25 (Mutual Agreement Procedure)), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4

FISCAL DOMICILE

1. For purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his tax status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

(b) if the State in which he has his center of vital interests cannot be determined, or if he has a permanent home available to him in neither State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to settle the question.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, assembly or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, or supervisory activities connected therewith, constitutes a permanent establishment but only if such site, project or activity continues for a period or periods aggregating more than 183 days in any 365-day period (including the period of any supervisory activity connected therewith).

4. Notwithstanding the preceding provisions of this Article the term "permanent establisment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed placed of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carriers on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

8. An insurance enterprise of one Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it receives premiums in that State or insures risks incurred in that State through an employee or other representative other than a broker or agent described in paragraph 6.

ARTICLE 6

INCOME FROM REAL PROPERTY

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and

other natural resources; ships, boats and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in that other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment and with any other associated enterprises.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than toward reimbursement of actual expense) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights or by way of commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. The participation of a partner in the business profits of a partnership ("societe de fait" or "association en participation") shall be taxable in the Contracting State where the partnership has a permanent establishment.

8. Nothing in this Article shall affect the application of any law of a Contracting State or its administrative practices relating to the determination of the tax liability of a person in cases where the information available to the competent authority of the Contracting State is insufficient to determine the profits to be attributed to a permanent establishment situated in that Contracting State, provided that, on the basis of the available information, the determination of the profits of the permanent establishment is consistent with the principles stated in this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise from the operation in international traffic of ships or aircraft shall be taxable:

(a) in Tunisia only if the place of effective management of the enterprise is in Tunisia or aboard a ship of which the home harbor is in Tunisia or the operator is a resident of Tunisia; and

(b) in the United States only if the enterprise is created under the law of the United States or a State thereof.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee or if such rental profits are occasional and accessory to other profits described in paragraph 1, and profits from the use, maintenance, or rental of containers and related equipment used in international traffic if such rental profits are occasional and accessory to other profits described in paragraph 1.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 14 percent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which owns directly at least 25 percent of the share capital of the company paying the dividends;

(b) 20 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect to the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares or other rights, not being debt-claims, participating in prof-

its, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as:

(a) such dividends are paid to a resident of that other State,

(b) the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, or

(c) that other State is the United States and such dividends are paid out of profits attributable to one or more permanent establishments which such company had in that other State, provided that the gross income attributed to such permanent establishments constituted at least 50 percent of such company's gross income from all sources.

Where subparagraph (c) applies and subparagraphs (a) and (b) do not apply, any such tax shall be subject to the limitations of paragraph 2.

6. Notwithstanding any other provision of this Convention, Tunisia may impose on the income of a company resident in the United States and attributable to a permanent establishment in Tunisia, an additional tax to the tax which would apply to the income of a company resident in Tunisia, but such additional tax may not exceed 14 percent of the profits attributable to that permanent establishment after deducting all taxes imposed by Tunisia on such profits other than the additional tax referred to in this paragraph.

7. Dividends, as defined in paragraph 3, shall be deemed to arise in a Contracting State if paid by a company which is a resident of that State or if paragraph 5(c) applies.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the interest.

3. Notwithstanding paragraphs 1 and 2, interest shall be exempt from tax in the Contracting State in which it arises if the interest is:

(a) beneficially derived by a Contracting State, a political subdivision or local authority thereof or an instrumentality of such State, subdivision or authority, not subject to tax by that State on its income (such as the Export-Import Bank of the United States or the Overseas Private Investment Corporation of the United States);

(b) beneficially derived by a resident of a Contracting State that is a bank or similar financial institution with respect to an obligation having a maturity of at least 7 years; or

(c) paid by the Government of the Tunisian Republic to a resident of the United States with respect to loans made to the Government of the Tunisian Republic or a political subdivision or local authority thereof.

4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the benefical owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner is a resident of the other State, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means:

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph film or films or tapes used for radio or television broadcasting);

(b) payments of any kind received as a consideration for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula, or process or for the use of, or the right to use, industrial, commercial, or scientific equipment (other than ships, aircraft, or containers used in international traffic) or for information concerning industrial, commercial, or scientific experience;

(c) payments of any kind received by a resident of a Contracting State as remuneration for technical or economic studies, wherever prepared, or as remuneration for technical assistance performed in the other Contracting State; and

(d) gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

6. Royalties, as defined in paragraph 2, shall be deemed to arise in a Contracting State to the extent that such royalties are paid with respect to the use of, or the right to use, rights or property within that State or, in the case of studies referred to in paragraph

3(c), to the extent that the payment is made by that Contracting State or a resident thereof.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income from Real Property) and situated in the other Contracting State may be taxed in that other State.

2. For purposes of this Article, immovable property situated in the other Contracting State means property referred to in Article 6 (Immovable (Real) Property) and, in the case of the United States, includes a United States real property interest as defined in section 897 of the Internal Revenue Code and the regulations thereunder.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable in Tunisia only if the place of effective management of the enterprise is in Tunisia, and in the United States only if the enterprise is created under the laws of the United States or a state thereof.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and:

(a) the individual is present in that other State for a period or periods aggregating more than 183 days in the taxable year concerned,

(b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base may be taxed in such other State, or

(c) the gross income derived in the taxable year from residents of that other State for the performance of such services in the other Contracting State exceeds seven thousand five hundred (7,500) United States dollars or its equivalent in Tunisian dinars.

2. Performance of personal services in an independent capacity includes, especially, independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions, Etc.) and 19 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned,

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of employment as a member of the regular complement of a ship or aircraft operated by an enterprise in international traffic shall be taxable:

(a) in Tunisia only if the place of effective management of the enterprise is in Tunisia;

(b) in the United States only if the enterprise is created under the laws of the United States or a state thereof.

ARTICLE 16

DIRECTORS' FEES

Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), a director's fee derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State (but not including fixed or contingent payments derived in his capacity as an officer or employee), which cannot be taken as a deduction by the corporation but is treated in that other State as a distribution of profits, may be taxed in that other State.

ARTICLE 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his or her personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or her or borne on his or her behalf, from such activities do not exceed seven thousand five hundred United States dollars ($7,500) or its equivalent in Tunisian dinars for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or an athlete in his or her capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

ARTICLE 18

PENSIONS, ETC.

1. Subject to the provisions of Article 19 (Governmental Functions):

(a) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State;

(b) social security benefits paid by a Contracting State to a resident of the other Contracting State may also be taxed in the first-mentioned State.

2. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under a contractual obligation.

3. Alimony paid to a resident of a Contracting State by a resident of the other Contracting State shall be exempt from tax in the other Contracting State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of one of the Contracting States to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

ARTICLE 19

GOVERNMENTAL FUNCTIONS

1. Remuneration, other than a pension, paid by or from public funds of one of the Contracting States, or any of its political subdivisions or local authorities, to a citizen of that Contracting State for labor or personal services performed in the discharge of governmental functions shall be exempt from tax by the other Contracting State.

2. (a) Any pension beneficially derived by a resident of one Contracting State and paid by, or from public funds of, the other Contracting State or any of its political subdivisions or local authorities, in respect of labor or personal services performed in the discharge of governmental functions shall be exempt from tax by that other Contracting State.

(b) However, such pension may also be taxed by the other Contracting State if paid to a citizen of that other Contracting State.

3. The provisions of Article 14 (Independent Personal Services), 15 (Dependent Personal Services), or 17 (Artistes and Athletes), as the case may be, shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 20

STUDENTS AND TRAINEES

A student, apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of his or her full-time education or training shall not be taxed in that State for a period not exceeding five taxable years from the date of his arrival in that State on:

(a) payments arising outside that State for the purpose of his or her full-time education or training;

(b) a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organization for the purposes of studying or doing research; and

(c) income from personal services performed in that other Contracting State in an amount not in excess of $4,000 U.S. dollars or its equivalent in Tunisian dinars for any taxable year.

ARTICLE 21

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6 (Income From Immovable (Real) Property), if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services) as the case may be, shall apply.

ARTICLE 22

GENERAL RULES

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws or one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) by any other agreement between the Contracting States.

2. Notwithstanding any provisions of this Convention except paragraph 3, a Contracting State may tax a citizen or resident of that Contracting State, as defined in Article 4 (Fiscal Domicile), in accordance with its domestic laws as if this Convention had not come into effect. For this purpose the term "citizen" includes a former citizen whose loss of citizenship was motivated by the avoidance of tax, the reason for the loss of citizenship having been either acknowledged by the taxpayer or determined by a court decision.

3. The provisions of paragraph 2 shall not affect:

(a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), paragraph 1 of this Article, and Articles 23 (Relief from Double Taxation), 24 (Nondiscrimination) and 25 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 19 (Governmental Functions) and 20 (Students and Trainees) upon individuals who are neither citizens of, nor have immigrant status, in that Contracting State.

ARTICLE 23

RELIEF FROM DOUBLE TAXATION

1. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amend-

ed from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the income tax paid to Tunisia; and, in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Tunisia from which it receives dividends, the United States shall allow credit for the income tax paid to Tunisia by or on behalf of the distributing company with respect to the profits out of which such dividends are paid. However, such credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid to Tunisia amounts paid as tax under the taxes referred to in paragraphs 2(b) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

2. In the case of Tunisia, when a resident of Tunisia derives income which, in accordance with the provisions of this Convention may be taxed in the United States, Tunisia shall allow as a credit against the tax on the income of that resident the income tax paid to the United States. However, such credit shall not exceed that part of the income tax, computed before the credit, which is attributable to the income which may be taxed in the United States.

3. For purposes of the preceding paragraphs of this Article, and except as otherwise provided in this Convention, income or profits derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention other than solely by reason of citizenship shall be deemed to arise in that other Contracting State.

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of the Contracting State who are residents in the other Contracting State shall not be subjected in that other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

(a) all individuals possessing the nationality of a Contracting State; and

(b) all legal persons, partnerships, and associations deriving their status as such from the laws in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), or paragraph 5 of Article 12 (Royalties) apply, interest, royalties and other

disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to all taxes imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23 (Relief From Double Taxation), to that of which he is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may through consultation deny the benefits of Articles 10, 11 and 12 to a company of a third country if the company becomes a resident of a Contracting State for the principal purpose of enjoying benefits under this Agreement.

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an

agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through representatives of the competent authorities of the Contracting States.

ARTICLE 26

EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The competent authorities shall also notify each other of official published information concerning the application of the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State.

ARTICLE 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

ENTRY INTO FORCE

1. This Convention shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) in respect of income tax withheld at the source, to amounts paid or credited on or after the earlier of the first day of January following the exchange of instruments of ratification or the first day of the fourth month following the exchange of instruments of ratification; and

(b) in respect of other taxes on income, to taxable periods ending on or after the thirty-first day of December of the year during which the exchange of instruments of ratification are exchanged.

ARTICLE 29

TERMINATION

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of January next following the expiration of the 6 month period;

(b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the expiration of the 6 month period.

DONE at Washington in duplicate, in the English and French languages, the two texts having equal authenticity, this 17th day of June, 1985.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

George P. Shultz

[George P. Shultz]

FOR THE GOVERNMENT OF THE TUNISIAN REPUBLIC:

Beji Caid Essebsi

[Beji Caid Essebsi]

JUNE 17, 1985.

His Excellency BEJI CAID FSSEBSI,
Minister of Foreign Affairs of Tunisia.

EXCELLENCY: I have the honor to refer to the Convention Between the Government of the United States of America and the Government of the Tunisian Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to

Taxes on Income and to confirm, on behalf of the Government of the United States of America the following understanding reached between the two Governments.

During the course of negotiations leading to the conclusion of the Convention signed today, representatives of the Tunisian Republic emphasized the importance of increased capital flows to Tunisia and asked that a special tax incentive to U.S. investment in Tunisia (e.g. a "tax sparing" credit) be included in the Convention. The United States delegation, while understanding the Tunisian position, is not prepared to agree to such a provision. I wish to assure you, however, that, should the United States position change and we agree to include such a provision in an income tax treaty with another country, we agree to reopen discussions with the Tunisian Republic with a view to extending the same benefit to investment in Tunisia.

Accept, Excellency, the assurances of my highest consideration.

GEORGE P. SHULTZ,
Secretary of State of the
United States of America.

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,
June 17, 1985.

(Translation)

EXCELLENCY: I have the honor to refer to your letter of today's date, which reads as follows:

[The French translation of the U.S. letter regarding the bilateral income tax treaty with Tunisia agrees with the original English text in all substantive respects.]

On behalf of the Government of the Tunisian Republic, I have the honor to confirm the understanding referred to in the letter sent to us by Your Excellency.

Accept, Excellency, the assurances of my highest consideration.

[BEJI CAID ESSEBSI]

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